

Pamela M. Egan, WSBA No. 54736  
POTOMAC LAW GROUP PLLC  
1905 7<sup>th</sup> Ave. W.  
Seattle, WA 98119  
Telephone: (415) 297-0132  
Email: [pegan@potomaclaw.com](mailto:pegan@potomaclaw.com)  
*Attorneys for Mark D. Waldron, Plaintiff,  
in his capacity as Chapter 7 Trustee*

**UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF WASHINGTON**

In re:

GIGA WATT, Inc., a Washington  
corporation,

Debtor.

MARK D. WALDRON, as Chapter 7  
Trustee,

Plaintiff,

vs.

PERKINS COIE LLP, a Washington  
limited liability partnership, *et al.*,

Defendants.

-and-

THE GIGA WATT PROJECT, a  
partnership,

Nominal Defendant.

Case No. 18-03197 FPC 11

The Honorable Frederick P. Corbit

Chapter 7

Adv. Case No. 20-80031

**TRUSTEE'S RULE 26(f) REPORT**

Pursuant to Federal Rule of Civil Procedure (FRCP) 26(f), applicable hereto  
by Federal Rule of Bankruptcy Procedure (FRBP) 7026, on December 23, 2020,  
by telephone, the following parties to this action met and conferred on the topics

TRUSTEE AND KUZENNY'S  
RULE 26(f) REPORT – Page 1

1 outlined in this report: (1) Elon Berk, counsel for Andrey Kuzenny (“Kuzenny”),  
2 (2) Ralph Cromwell and John Munding, counsel for Perkins Coie LLP and for  
3 Lowell Ness (collectively, “Perkins Coie”), and (3) undersigned counsel for Mark  
4 D. Waldron, in his capacity as Chapter 7 Trustee (“Trustee” or “Plaintiff”). On  
5 January 6, 2021, counsel for Andrey Kuzenny and undersigned further conferred  
6 by telephone regarding the topics outlined in this report.

7 **1. Nature of Claims and Defenses.**

8 a) Claims

9 Giga Watt Pte. Ltd. (“GW Singapore”) misappropriated approximately  
10 \$10.8 million from an escrow with the substantial assistance of Kuzenny and  
11 Perkins Coie. The escrow held the proceeds of an Initial Coin Offering (“ICO”)  
12 conducted by Giga Watt, Inc. (“Giga Watt”) and GW Singapore pursuant to the  
13 Giga Watt Project, which was a partnership between Giga Watt and GW  
14 Singapore. Through the ICO, GW Singapore sold tokens. One token represented  
15 the right to use 1 watt of mining power at Giga Watt’s facilities for fifty years. A  
16 token initially cost \$1, with the price increasing in \$.05 increments until it reached  
17 \$1.20.

18 The first set of facilities would be built with either Giga Watt’s own money  
19 or a loan from GW Singapore. When that first set was completed, GW Singapore  
20 would be entitled to withdraw a certain amount of ICO token sale proceeds. For  
21 example, if Giga Watt built out three (3) megawatts of mining capacity, then GW  
22 Singapore could withdraw approximately \$3 million from the ICO. GW Singapore  
23 would then lend a portion or all of those proceeds to Giga Watt so that Giga Watt

24 TRUSTEE AND KUZENNY’S  
25 RULE 26(f) REPORT – Page 2

1 could build the next set of pods. When those were built, a corresponding amount  
2 of money could be released from the escrow. When construction was completed, a  
3 corresponding amount of tokens would also be released.

4 Kuzenny, GW Singapore and Perkins Coie released the escrow proceeds  
5 regardless of construction. Holders of approximately half of all the tokens sold,  
6 who were entitled to either power or a refund, received neither. Bleeding out the  
7 escrow destroyed or materially contributed to the demise of the Giga Watt Project.

8 b) Defenses

9 Kuzenny has invoked the privilege against self-incrimination provided by  
10 the Fifth Amendment of the U.S. Constitution. In his Answer, filed on January 7,  
11 2021, he has also raised certain affirmative defenses. [AP Doc 21.]

12 Perkins Coie has stated that it is not prepared to discuss its defenses until  
13 the motion to withdraw the reference that it filed on December 31, 2021 [AP Doc  
14 17] is resolved. FRBP 5011 provides that a motion to withdraw the reference does  
15 not stay the proceeding.

16 **2. Initial/Pre-Discovery Disclosures.**

17 On November 23, 2020, the Trustee sent to Perkins Coie, through counsel, a  
18 copy of the Complaint (unredacted) with hyperlinks to the evidence underlying  
19 the allegations.

20 At the conference on December 23, 2021, Plaintiff verbally provided: (a)  
21 the name of each individual likely to have discoverable information, along with  
22 the subjects of that information, that the Plaintiff may use to supports its claims  
23 and (b) a description by category and location of all documents, electronically

24 TRUSTEE AND KUZENNY'S  
25 RULE 26(f) REPORT – Page 3

1 stored information, and tangible things that the Plaintiff may use to support his  
2 claims. Plaintiff has not yet provided to the Defendants a computation of damages.  
3 However, when it provides its written Initial Disclosures, it will address this issue.

4 On January 7, 2021, the Trustee sent to Kuzenny, through counsel, a copy  
5 of the Complaint (unredacted) with hyperlinks to the evidence underlying the  
6 allegations.

7 Kuzenny, through counsel, has asserted that he cannot produce any  
8 discovery because he has invoked the privilege against self-incrimination. Counsel  
9 for Kuzenny and for the Trustee have agreed to discuss the interplay between the  
10 Fifth Amendment privilege, the duty to produce discovery, and the right to assert  
11 affirmative defenses. Counsel for the Trustee will be prepared to discuss these  
12 issues at the Scheduling Conference. They also discussed the possibility of  
13 settlement.

14 Perkins Coie has declined to discuss discovery or otherwise participate in  
15 the case pending resolution of its motion to withdraw the reference. The due date  
16 for an answer is January 7, 2021. No answer from Perkins Coie is on file. No  
17 motion to stay the proceeding has been filed. Instead, on the due date for this  
18 report, Perkins Coie filed an expedited motion to extend today's deadline and to  
19 extend the Scheduling Conference.

20 Dated: January 7, 2021 POTOMAC LAW GROUP PLLC

21  
22 By: /s/ Pamela M. Egan  
23 Pamela M. Egan (WSBA No. 54736)  
*Attorneys for Mark D. Waldron, Chapter 7*  
*Trustee, Plaintiff*

24 TRUSTEE AND KUZENNY'S  
25 RULE 26(f) REPORT – Page 4

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

TRUSTEE AND KUZENNY'S  
RULE 26(f) REPORT – Page 5

1 4821-4766-0758, v. 1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23 CHAPTER 11 TRUSTEE'S REPLY  
24 TO RESPONSE TO MOTION TO  
DISMISS AMENDED COMPLAINT – Page 1

25